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16 KIDSART, INC.

17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA  
19 WESTERN DIVISION

20 **KIDSART, INC.**  
21 a California Corporation,  
22 Plaintiff,

23 v.

24 **KIDZART TEXAS, LLC**, a  
25 Nevada Corporation,  
26 Defendant.

Case No. CV08-6185 PA (SSx)

**CONSENT JUDGMENT**

**NOTE: CHANGES MADE BY THE COURT**

1           The parties, having (i) entered into a settlement agreement resolving this  
2 dispute and (ii) jointly moved for entry of this Consent Judgment terminating this  
3 proceeding, and for good cause shown, it is hereby ORDERED, ADJUDGED,  
4 AND DECREED that:

5           1.     This Court has jurisdiction over the subject matter of this action  
6 under § 39 of the Trademark Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1331,  
7 1332, 1338 and 1367.

8           2.     Plaintiff KidsArt, Inc. ("KidsArt") is a corporation organized  
9 and existing under the laws of California with a place of business in La Crescenta,  
10 California and with a trade area that includes the following 10 counties in Southern  
11 California: San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los  
12 Angeles, Orange, Riverside, San Diego and Imperial (the "KidsArt Trade Area").

13           3.     Defendant KidzArt Texas, LLC ("KidzArt") is a corporation  
14 organized and existing under the laws of the State of Nevada with a place of  
15 business in New Braunfels, Texas 78130 and with a trade area that includes all of  
16 the United States except for the 10 counties in Southern California: San Luis  
17 Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Orange,  
18 Riverside, San Diego and Imperial. (the KidzArt Trade Area).

19           4.     Pursuant to 15 U.S.C. § 1119, this Court hereby declares that  
20 KidsArt is the owner of all right, title, and interest in and to the trademark or  
21 service mark KIDSART in connection with its goods and services including  
22 educational services in the nature of art schools and conducting classes and  
23 workshops in the field of art; and the KIDSART mark is valid and has acquired  
24 secondary meaning through many years of substantially exclusive and continuous  
25 use in the KidsArt Trade Area.

26     ///

27     ///

1                   5. Pursuant to 15 U.S.C. § 1119, this Court hereby declares that  
2 KidzArt has used KIDZART as a trademark or service mark in connection with  
3 franchise services, namely, offering technical assistance in the establishment and/or  
4 operation of educational programs and after-school enrichment programs; and  
5 educational services, namely, conducting classes in the field of art and distributing  
6 materials in connection therewith; and the KIDZART mark is valid and has  
7 acquired secondary meaning through many years of substantially exclusive and  
8 continuous use in the KidzArt Trade Area.

9                   6. KidsArt and each of its officers, agents, servants, employees,  
10 and all others acting on KidsArt's behalf or in concert or privity with KidsArt, shall  
11 have the exclusive right to use and register the name and mark KIDSART within  
12 and for the KidsArt Trade Area.

13                  7. KidzArt and each of its officers, agents, servants, employees,  
14 and all others acting on KidzArt's behalf or in concert or privity with KidzArt shall  
15 have the exclusive right to use and register the name and mark KIDZART within  
16 and for the KidzArt Trade Area.

17                  8. KidsArt shall have one year to change the name and mark under  
18 which any existing studios or programs operate outside the KidsArt Trade Area,  
19 provided, however, that KidsArt shall not be required to change any corporate  
20 names of any existing companies that contain the word "KidsArt" so long as any  
21 such name is not used as a trademark, service mark or trade name on any signs,  
22 advertisements or other materials disseminated to actual or potential customers in  
23 the KidzArt Trade Area.

24                  ///

25                  ///

26                  ///

27                  ///

1                   9.     KidzArt shall have one year to change the name and mark under  
 2     which any existing studios or programs operate outside the KidzArt Trade Area,  
 3     provided, however, that KidzArt shall not be required to change any corporate  
 4     names of any existing companies that contain the word "KidzArt" so long as any  
 5     such name is not used as a trademark, service mark or trade name on any signs,  
 6     advertisements or other materials disseminated to actual or potential customers in  
 7     the KidsArt Trade Area.

8                   10.    Pursuant to 15 U.S.C. 1119 and 1052(d) the court declares that  
 9     no likelihood of confusion, mistake or deception is likely to occur if the parties use  
 10    their respective marks in their respective trade areas and the Patent and Trademark  
 11    Office is hereby directed to:

12                   (a)    Grant to KidzArt a concurrent use registration for the mark  
 13     KIDZART for "educational services, namely, conducting classes in the field  
 14     of art and distributing materials in connection therewith" for a registration  
 15     limited to the area comprising the United States, its territories or possessions,  
 16     except for the counties of San Luis Obispo, Kern, San Bernardino, Santa  
 17     Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial  
 in the state of California;

18                   (b)    Grant to KidsArt a concurrent use registration for the mark  
 19     KIDSART for "educational services in the nature of Art Schools and  
 20     conducting classes and workshops in the field of Art" a registration limited to  
 21     the area comprising the counties of San Luis Obispo, Kern, San Bernardino,  
 Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and  
 Imperial in the state of California; and,

22                   (c)    Cancel Supplemental Registration No. 2491627.

23                   11.    Upon issuance of the aforesaid registrations, and except as  
 24     otherwise provided herein, all claims filed by the parties to this proceeding shall be  
 25     dismissed with prejudice and each party shall bear its own costs and attorneys' fees  
 26     it has incurred in connection with this matter without recourse to any other party.

27     ~~In the meantime, the Trial and Final Pretrial Conference dates currently set in the~~  
 28     ~~action are removed from the Court's calendar and all related deadlines are stayed.~~

1 The action is hereby placed on Inactive Status pending the issuance of the above-  
2 referenced registrations. KidsArt shall file a request for dismissal within 30 days  
3 after the issuance of the registrations.

4 ~~12. The Court hereby retains jurisdiction over this matter for~~  
5 ~~purposes of enforcing the settlement agreement between the parties and this~~  
6 ~~Consent Judgment.~~

7 **IT IS SO ORDERED.**

8  
9  
10 November 17, 2009

11 **Dated**

  
**UNITED STATES DISTRICT JUDGE**

12  
13 Respectfully submitted and consented to:

14  
15 KidsArt, Inc.:

KidzArt Texas, LLC:

16  
17 By: \_\_\_\_\_  
18 Sher Warren  
19 Its: Vice President

By: \_\_\_\_\_  
Sue Bartman  
Its: CEO